



FEDERAL ELECTION COMMISSION

Washington, DC 20463

February 26, 1999

Chicago Sightseeing Company, Inc.
d/b/a American Sightseeing Company
c/o Francis Ferrone
Palmer House Hilton
27 East Monroe
Suite 515
Chicago, Illinois 60603

RE: MUR 4721

Dear Mr. Ferrone:

On February 24, 1998, the Federal Election Commission notified the Chicago Sightseeing Company, Inc. d/b/a American Sightseeing Company ("CSC") of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to CSC at that time.

Upon further review of the allegations contained in the complaint, and information supplied by CSC, the Commission, on February 23, 1999, found that there is reason to believe CSC violated 2 U.S.C. § 441b(a), provisions of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office along with answers to the enclosed questions within 30 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the

Edward P. Faberman, Esquire

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matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Xavier McDonnell, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Scott E. Thomas
Chairman

Enclosures

Questions

Designation of Counsel Form

Factual and Legal Analysis

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

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MUR 4721

**INTERROGATORIES AND REQUEST
FOR PRODUCTION OF DOCUMENTS**

TO: Chicago Sightseeing Company, Inc. d/b/a American Sightseeing Company
c/o Francis Ferrone
Palmer House Hilton
27 East Monroe
Suite 515
Chicago, Illinois 60603

In furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby requests that you submit answers in writing and under oath to the questions set forth below within 30 days of your receipt of this request. In addition, the Commission hereby requests that you produce the documents specified below, in their entirety, for inspection and copying at the Office of the General Counsel, Federal Election Commission, Room 659, 999 E Street, N.W., Washington, D.C. 20463, on or before the same deadline, and continue to produce those documents each day thereafter as may be necessary for counsel for the Commission to complete their examination and reproduction of those documents. Clear and legible copies or duplicates of the documents which, where applicable, show both sides of the documents may be submitted in lieu of the production of the originals.

INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from September 1, 1997 to present.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondents in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Didrickson for U.S. Senate" shall mean the campaign of Loleta Didrickson, and includes that candidate and all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and request for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

QUESTIONS AND DOCUMENT REQUESTS

1. State your practices and policies regarding the leasing of buses, including but not limited to the following:

a. state the rates you charge for the rental of a 47 and 55 foot bus, specifying how time of use, mileage, distances, fuel costs and number of passengers are considered in calculating such rates;

b. state your practices and policies regarding bus drivers, specifically whether you provide drivers on all excursions, whether the costs for the driver are included in the rates specified in response to Question 1(a), whether you permit renters or lessees to drive your bus, and (if so) what requirements you impose on such drivers;

c. state your practices and policies regarding compensation for bus drivers, specifically whether drivers receive overtime or are paid for nights in which they are on excursions away from home;

d. state your practices and policies regarding security deposits and insurance, specifically whether you require renters or lessees to provide security deposits and whether insurance is required to be pay separately or is included in the rate specified in response to Question 1(a);

e. state your practices and policies regarding overnight stays, e.g., whether you charge renters or lessees for the time that a bus is not at your location or headquarters, whether you charge separately for the costs incurred for any bus drivers, e.g. salary and accommodations;

f. state your practices and policies regarding whether agreements must be in writing and whether renters or lessees must provide their signatures in order to enter any agreement with you;

g. state your practices and policies regarding advertising through your bus (via banners or signs), including how you determine the cost of such advertising and whether the bus will be leased or rented when it contains advertising;

h. state your practices and policies regarding receipt of payment for services and any extensions of credit,

i. identify and produce all documents which contain or describe the practices and policies referenced within this question.

2. State whether you provided a bus to Didrickson for U.S. Senate at any time during 1997-1998. If so, state the size of the bus (length and/or number of seats) and:

a. state the date when you and Didrickson for U.S. Senate agreed that you would be compensated for the use of the bus;

b. state whether the agreement for the use of the bus was in writing;

c. state the amount that you were compensated for the use of the bus, and for the number of hours/days that such payment was for;

d. state the number of days and/or hours that Didrickson for U.S. Senate was provided with the bus;

e. identify all persons involved in negotiating and executing any agreement for the use of the bus;

f. identify and produce all documents related to the use of the bus, including but not limited to contracts, contract cancellations, correspondence, invoices, checks, memos, etc.

3. State who insured the bus during the time which the bus was provided to Didrickson for U.S. Senate. If Didrickson for U.S. Senate paid to insure the bus, state how much it paid and explain the terms of the arrangement.

4. State whether Didrickson for U.S. Senate provided you with a security deposit in connection with its use of the bus. If so, state how much you received.

5. Identify who drove the bus during the time that it was provided to Didrickson for U.S. Senate. If a driver was provided by you during the time in which the bus was provided to Didrickson for U.S. Senate, identify who compensated the driver, state the number of hours that such driver was compensated and the total gross amount of compensation that such driver received.

6. State whether the bus was returned to CSC's offices in Chicago each evening in which the bus was provided to Didrickson for U.S. Senate. If the bus was not returned to CSC's offices in Chicago each evening and a bus driver employed by you accompanied Didrickson for U.S. Senate, then;

a. provide the dates and locations of all overnight stays;

b. identify who, if anyone, paid for the driver's salary and accommodations during such time frames, e.g., meals and hotel, motel, etc.;

c. identify and produce all documents relating to the terms or arrangements regarding the bus driver and his or her accommodations, e.g., receipts, correspondence.

7. State whether you had an agreement with Didrickson for U.S. Senate regarding the use of your bus for an advertisement via a banner. If so:

a. provide the dates when the advertising was placed on the bus and removed from it;

b. identify all persons involved in negotiating and executing any agreement for the advertising via the bus;

c. state the amount that you were compensated for the advertising via the bus, specifying the time frame that such payment was for;

d. state whether the agreement was in writing;

e. identify all persons involved in negotiating and executing any agreement for the advertising via the bus the bus;

f. identify and produce all documents related to the advertising via the bus, including but not limited to contracts, contract cancellations, correspondence, invoices, checks, memos, etc.

8. State whether the you and Didrickson for U.S. Senate had any agreement regarding your renting or leasing the bus to others while it contained the pro-Didrickson advertising, including any restrictions or preferences about whether it would be leased or rented to others, or to whom it could be leased or rented. If so, describe such agreement and identify and produce all documents related to it.

9. Provide the rental history for the bus which contained the pro-Didrickson advertising from January 1, 1997 through March 1998, specifically stating the number of days it was rented, the identity of those who rented it and the amount received through each rental agreement. Identify and produce all documents related the rental or leasing of the bus during this period.

FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Chicago Sightseeing Company, Inc
d/b/a/ American Sightseeing Company

MUR 4721

I. GENERATION OF MATTER

The Office of General Counsel received a complaint from Michael R. Cys indicating potential violations by the Chicago Sightseeing Company, Inc, ("CSC") in connection with an agreement with Didrickson for U. S. Senate and Tom Hughes, treasurer ("Didrickson campaign" or "campaign"), the authorized campaign of Loleta Didrickson, the Illinois state comptroller who ran for the Republican Senate nomination in Illinois. The complaint indicates that CSC may have made a corporate and/or excessive contribution in connection with the value of that bus. A response denying the allegations has been received from CSC.

II. APPLICABLE LAW

The Federal Election Campaign Act of 1971, as amended (the "Act" or "FECA") The Act prohibits any corporation from making a "contribution" in connection with a federal election and prohibits any political committee from knowingly accepting such a contribution. 2 U.S.C.

§ 441b(a). A "contribution" is defined to include any gift of services or "anything of value" made in connection with a federal election. 2 U.S.C. § 441b(b)(2). The term "anything of value" includes all in-kind contributions and the provision of any goods or services without charge, or at a charge which is less than the usual and normal charge. 11 C.F.R. § 100.7(a)(1)(iii)(A). The "usual and normal" charge is the price of the goods in the market from which they ordinarily

would have been purchased at the time of the contribution, i.e., the fair market value. 11 C.F.R. § 100.7(a)(1)(iii)(B). An incorporated vendor may extend credit to a political committee provided that it is extended in the ordinary course of business and the terms are substantially similar to extensions of credit given to nonpolitical vendors that are of a similar risk and size of obligation. 11 C.F.R. § 116.3(b).

III. SUMMARY OF COMPLAINT AND RESPONSE

a Complaint

The complaint alleges that CSC made an in-kind contribution to the campaign in connection with a tour bus. It also claims that the value of the lease of the bus could be \$120,000 or higher and that there may have been an improper extension of credit, thus resulting in a corporate or excessive contribution. The complaint points to disclosure reports, various news articles and a Didrickson campaign news release and web site. These sources indicate that the Didrickson campaign used a forty foot tour bus that was "shrink wrapped in a bright red 'Loleta for Senate Republican 1998' banner." Complaint at Exhibit B, item 1, page 2. The bus was reportedly used on a 13 city tour undertaken by the candidate from November 5-7, 1997, and for other events in February of 1998.

The complaint alleges that since the bus was wrapped with the Loleta banner from November through February of 1998, CSC was "effectively precluded" from leasing it to any other party. As the complaint calculates the fair market value of the bus at \$800 per day, plus \$10,000 for the wrap/banner and \$4,800 per month for advertising, it concludes that the total value of the bus from October through February (when the complaint was filed) was \$120,000. The complainant contends that the \$120,000 does not even include the cost of a driver, insurance, or a security deposit.

b. Response

CSC, an incorporated entity, states that the price that it charged the Didrickson campaign for the use of the bus, \$500 per day, was the "normal price." See response of CSC, dated March 9, 1998, at page 1. CSC states that the campaign only had possession of the bus for six days and that on all other days the firm used the bus "for its other clients." *Id.* CSC also enclosed invoices related to its agreement. The invoices from CSC are as follows:

Invoice #	Invoice Date	Services	Date of Services	Amount
11199	Jan. 10, 1998	Advertising (Banner)	Nov. 9-Dec.8, 1997	\$ 3,360
11200	Jan. 10, 1998	Advertising (Banner)	Dec. 9, 1997-Jan. 8, 1998	\$ 3,360
11247	Feb. 9, 1998	Bus use (4 days)	Nov. 5-8, 1997	\$ 2,000
11267	Feb. 11, 1998	Advertising (Banner)	Jan. 9-Feb. 8, 1998	\$ 3,360
11295	March 4, 1998	Bus use (2 days)	Feb. 7 & 14, 1998	\$ 1,000
11296	March 4, 1998	Advertising (Banner)	Feb. 9-Feb. 28, 1998	\$ 3,340
11298	March 4, 1998	Removal of Banner	Feb. 28, 1998	\$ 400
			TOTAL	\$16,820

The CSC invoices each state that payment is due within 10 days and that 1.5% per month will be added to items paid after the due date. When the campaign amended its 1997 year end report after the complaint in this matter was filed, it disclosed debt to CSC totaling \$2,000 for "charter bus." This appears to have been for the bus use during November of 1997. The campaign's amended year end report did not disclose the \$3,360 incurred by the campaign for the advertising from November 9-December 9, 1997. The campaign's 1998 disclosure report indicates that it paid CSC a total of \$8,720 on February 17, 1998. However, as of the date of this report, the campaign still reports owing \$8,100 to CSC.

IV. ANALYSIS

The information at hand raises questions and leaves unclear whether an in-kind corporate contribution was made and accepted in connection with the campaign's use of the tour bus with

the pro-Loleta Didrickson banner. This Office currently lacks any independent information to determine the fair market value for the daily use of the bus, specifically whether it was \$500 per day, or, as the complainant's claim, \$800 per day plus any costs for the driver, insurance, etc. On its public internet cite, CSC indicates that it charges \$260 for a 47 passenger bus ride from Chicago airports to downtown Chicago, with a total of two hours waiting and driving time, and with a \$50 charge for each additional hour. Although is unclear whether this airport service is considered within the bus tour industry to be comparable to the type of charter at issue in this matter, applying those internet advertised fees to the services at issue here, it would appear that the fair market value would be close to the \$800 per day fee quoted by the complainants. In fact, given factors such as mileage, fuel and service costs, it would appear more reasonable to conclude that daily tours of multiple cities spread out across the state, like the ones undertaken by the campaign on November 5-7, 1997, would cost far more than a trip to downtown Chicago from one of the local airports.¹

In any event, the underlying terms of the agreement are currently unknown. For instance, it is unclear whether \$500 per day included a driver, insurance and fuel. Questions are also raised about the 12 hour rental period. The campaign's printed itinerary for the November 5-7 bus tour includes 13 cities spread out over various locations across the state, with distances that would not appear to permit the Didrickson campaign to return the tour bus to CSC in Chicago each evening. If so, it is unclear why the campaign was only charged for 12 hours rather than for a 24 hour period. It is also unclear whether the corporation paid any costs associated with any overnight stays, e.g., any expenses incurred for a bus driver, etc.

¹ The Didrickson campaign's web states that during the three day bus tour in November, 1997, it "logged more than 1,100 miles" on the bus. Complaint at Exhibit A.

Other factors raise questions about the terms of the agreement. While the campaign used the bus on November 5-7, 1997, the CSC invoice for such use is dated February 9, 1998. The February 9th invoice date corresponds with when, according to press reports, Didrickson's opponent had first brought the issue to public attention. See Attachment 1 (stating that after the opponent raised the issue, the Didrickson campaign "'scrambled' on 2/9 to file updated FEC reports"). The February 9, 1998 invoice date raises a question as to whether the campaign would have even been billed for the use of the bus if the issue had not been brought to light by Didrickson's opponent. Moreover, the cancellation of the agreement on February 19, 1998, right after issues related to the bus came to press attention and this complaint was filed, raises the question of whether the terms for the use of the bus (and perhaps also the costs for the advertising via the pro-Didrickson banner) may have been more favorable than CSC might have provided to others.

It is currently unclear whether there was a written instrument, other than the invoices, evidencing the terms of the agreement between CSC and the campaign for the use of the bus and the advertising. We note that the document entitled "contract cancellation" does not include a cross reference to any written instrument and provide the date thereto (as is the usual practice). This suggests that there may not have been any written contract. Indeed, if there was no written contract, questions are raised about whether this was the usual manner in which CSC conducted business. In light of the foregoing, an examination of the underlying facts appears necessary.

Finally, questions are raised about whether the extension of credit by CSC was in the ordinary course of business. See 11 C.F.R. § 116.3(b). The invoices suggest that CSC usually required prompt payment; each invoice states that payment must be made within 10 days or a 1.5% per month charge would be added. Yet CSC did not follow that policy with the

Didrickson campaign. It was not until February of 1998 that CSC even issued the \$2,000 invoice for the campaign's use of the bus in November of 1997 and it was not until January 10, 1998 that CSC issued the invoice for the bus banner advertising from November 8 though December 8, 1997. These invoices, totaling \$8,720, were not paid until February 17, 1998, after this issue received press attention. Despite the fact that the invoices were not paid within 10 days, it does not appear that any fee was charged or paid as called for on the face of CSC's invoices.

The invoice for advertising via the pro-Didrickson banner for the period from January 9 through February 8, 1998, totaling \$3,330, was promptly issued by CSC on February 11, 1998. However, this amount has still not been paid. The invoices for the use of the bus for two days in early to mid February, totaling \$1,000, advertising via the banner from February 9 through 28, 1998, at a cost of \$3,340, and the \$400 to remove the banner were not issued until March 4, 1998. Like the invoice from February 11, 1998, these amounts have not been paid. Thus, disclosure reports show that the Didrickson campaign still owes CSC \$8,100. No late fee has been charged according to disclosure reports.

V. SUMMARY

In summary, the information at hand raises a number of questions about the terms of the agreement for the charter bus and advertising via such bus, possibly amounting to an in-kind corporate contribution. In light of the limited information at hand, there is reason to believe that the Chicago Sightseeing Company, Inc., d/b/a/ American Sightseeing Company violated 2 U.S.C. § 441b(a).